

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY WELLINGTON

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E.O. 11652: N/A

TAGS: EAIR, NZ

SUBJECT: CIVAIR - PAN AM CHANGE OF GAUGE PROBLEM

REF : WELLINGTON 1424

1. GONZ'S REFUSAL TO APPROVE PAA'S CHANGE OF GAUGE AT SYDNEY ON FLIGHT 811/812 SERIOUSLY RESTRICTS AIRLINE'S ABILITY TO ADJUST FLIGHT SCHEDULE TO MAXIMIZE USE OF LIMITED FLIGHTS TO SYDNEY AND TO USE EXCURSION FARES WHICH WERE SUBJECT OF RECENT PAA-GONZ PROBLEM. DEPT SEES NZ FAILURE TO APPROVE THIS FLIGHT AS ONE MORE CASE IN A GROWING LIST OF INSTANCES WHERE THE NZ CIVAIR AUTHORITIES ARE HARASSING PAN AM. THIS DISTURBANCE OF TRADITIONALLY FRIENDLY U.S.-N.Z. RELATIONS WITH MANUFACTURED DIFFERENCES APPEARS TO HAVE BECOME ALMOST A POLICY: TO CREATE PROBLEMS WHERE NONE NEED EXIST. THE RIGHT TO CHANGE GAUGE WITHIN A FLIGHT HAS BEEN LONG ACCEPTED AS BEING WITHIN THE TERMS OF THE BERMUDA TYPE AGREEMENT. THE GONZ QUESTIONING THIS RIGHT IS INEXPLI-
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CABLE: IS IT IGNORANCE OF AVIATION LAW OR JUST PART OF

THIS GROWING HISTORY OF PAA HARASSMENT? DEPT IS PUZZLED BY THESE NZ ACTIONS IN VIEW OF THE HEAVY FAVORABLE BALANCE OF BENEFITS WHICH ANZ CURRENTLY ENJOYS UNDER THE BILATERAL.

2. IN ORDER TO OBTAIN GONZ APPROVAL OF FLIGHT 811/812, WITH THE GAUGE CHANGE INCLUDED, AND AT THE SAME TIME TO CONVEY GROWING DISPLEASURE OF U.S. AUTHORITIES WITH THIS APPARENT TREND, THE EMBASSY IS REQUESTED TO SUBMIT THE FOLLOWING NOTE:

QUOTE: ...AND REFERS TO THE SECRETARY OF TRANSPORT'S LETTER OF APRIL 13, 1976, TO PAN AMERICAN WORLD AIRWAYS. THE LETTER STATES THAT, WITH REFERENCE TO PAN AMERICAN'S FLIGHT 811/812, "THE PROPOSED CHANGE OF GAUGE AT SYDNEY PRECLUDES THE GRANT OF APPROVAL FOR THE SERVICE BEYOND SYDNEY TO DENSPASAR AND HONG KONG," AND CONCLUDES WITH THE STATEMENT THAT "THE OMISSION OF THIS SERVICE FROM THE LICENSE WILL, THEREFORE, NOT AFFECT ITS OPERATION WHICH WILL, NO DOUBT, CONTINUE AS BEFORE UNDER OTHER ARRANGEMENTS."

THE USG IS SURPRISED BY THE NEW ZEALAND GOVERNMENT QUESTIONING THE LONG ACCEPTED RIGHT OF AN AIRLINE TO CHANGE THE GAUGE OF AIRCRAFT WITHIN A FLIGHT. THE TERM "CHANGE OF GAUGE" WAS FIRST USED IN AVIATION DOCUMENTS IN SECTION 5 OF THE ANNEX TO THE BERMUDA AGREEMENT OF 1946. THAT SECTION IMPLICITLY RECOGNIZES THAT THE RIGHT EXISTS AND SIMPLY IMPOSES CONDITIONS ON THE EXERCISE OF THIS RIGHT. IN GENERAL, THESE CONDITIONS INCLUDE THE FOLLOWING REQUIREMENTS: THE CHANGE SHOULD BE JUSTIFIED ON ECONOMY OF OPERATION; THE CHANGE SHOULD BE NORMALLY TO SMALLER CAPACITY AIRCRAFT IN ORDER NOT TO VIOLATE THE CAPACITY PROVISIONS OF THE AGREEMENT; THERE SHOULD BE AN ADEQUATE VOLUME OF THROUGH TRAFFIC; AND THE SMALLER AIRCRAFT SHOULD BE SCHEDULED SO AS TO AWAIT THE LARGER AIRCRAFT. ALL THESE CRITERIA ARE SATISFIED BY PAN AMERICAN'S FLIGHT 811/812.

A CHANGE OF GAUGE IS A MATTER OF OPERATIONAL ECONOMY LIMITED OFFICIAL USE

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AND ITS ONLY SIGNIFICANCE, INSOFAR AS THE BILATERAL AIR TRANSPORT AGREEMENT IS CONCERNED, IS THE FACT THAT IT MAY INVOLVE A CHANGE OF CAPACITY. IN THIS LIGHT, THE OCCURRENCE OF THE GAUGE CHANGE IN A THIRD COUNTRY, AND NOT IN NEW ZEALAND, MAKES IT EVEN MORE ACCEPTABLE. MOREOVER, THE USG CANNOT AGREE THAT THE CHANGE OF GAUGE IN THIS CASE OR ANY OTHER ALTERS THE FACT THAT THE SERVICE ORIGINATES AND TERMINATES IN THE U.S. FLIGHT 811/

812 CLEARLY DOES SO.

THIS PROBLEM CAUSES ADDITIONAL CONCERN TO THE U.S. GOVERNMENT BECAUSE IT IS YET ANOTHER IN A SERIES OF DISTURBANCES BETWEEN THE U.S. DESIGNATED AIR CARRIER AND THE NEW ZEALAND GOVERNMENT. WE WOULD NOTE THAT THE U.S. GOVERNMENT HAS EXHIBITED FORBEARANCE IN SEVERAL AREAS THAT COULD HAVE CAUSED BILATERAL PROBLEMS: THE CONTINUING SIZEABLE IMBALANCE OF BENEFITS THAT EXISTS IN NEW ZEALAND'S FAVOR, AND THE INTERCHANGE BETWEEN AIR NEW ZEALAND AND BRITISH AIRWAYS AT LOS ANGELES.

THE FAILURE OF THE NEW ZEALAND GOVERNMENT TO APPROVE THE SYDNEY-DENPASAR-HONG KONG SEGMENT OF THE PROPOSED FLIGHT SERIOUSLY IMPAIRS PAN AMERICAN'S ABILITY TO OPERATE ITS SERVICE IN THE MOST EFFICIENT AND ECONOMIC MANNER. SINCE THIS EFFICIENCY CANNOT BE ACHIEVED BY ANY OTHER MEANS AND SINCE IT IS CLEARLY WITHIN THE CONTEXT OF THE BILATERAL AGREEMENT, THE UNITED STATES HOPES NEW ZEALAND GOVERNMENT APPROVAL OF THIS FLIGHT WILL BE GRANTED; TO DO OTHERWISE WOULD ONLY CREATE UNCERTAINTY WHICH WOULD BE UNSETTLING TO PASSENGERS AND SHIPPERS AND INJURIOUS TO PAN AMERICAN'S POSITION IN THE NEW ZEALAND MARKET, A CONDITION NEITHER GOVERNMENT WOULD FIND SATISFACTORY.

COMPLIMENTARY CLOSE. UNQUOTE. SISCO

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